

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

LONDON GRAYS,

Defendant and Appellant.

E070470

(Super.Ct.No. 16CR050413)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,  
Judge. Affirmed.

Stephane Quinn, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

## I

### INTRODUCTION

Defendant and appellant London Grays choked and pushed his girlfriend, stole her cellular phone, and destroyed cabinetry following an argument. Pursuant to a negotiated disposition, defendant eventually pled no contest to corporal injury to a cohabitant (Pen. Code, § 273.5, subd. (a)),<sup>1</sup> in exchange for an indicated sentence of four years in state prison and dismissal of the remaining allegations. Prior to sentencing, defendant moved to withdraw his guilty plea based on ineffective assistance of counsel. After an evidentiary hearing, the trial court denied defendant's motion to withdraw his plea. The trial court subsequently sentenced defendant to four years in state prison with 561 days of credit for time served, and dismissed the remaining counts and enhancement allegations. Defendant appeals from the judgment, challenging the validity of the plea. Based on our independent review of the record, we find no error and affirm the judgment.

## II

### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

On August 25, 2016, defendant and his girlfriend got into an argument over defendant wanting his girlfriend to delete data on her cell phone. The verbal altercation eventually became physical with defendant choking and pushing his girlfriend. The push caused defendant's girlfriend to fall back and hit a bathroom wall. The victim's sister

---

<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> The factual background is taken from the preliminary hearing.

came to the bathroom and yelled at defendant to get his hands off her sister. Defendant then pushed the sister, began ripping cabinet doors off hinges, took his girlfriend's cell phone, and fled to his vehicle. Defendant's girlfriend followed defendant and retrieved her cell phone. She then went back to her residence, locked the front door, and hid her cell phone underneath the kitchen sink. Thereafter, defendant kicked open the front door and found his girlfriend's cell phone. He then took the cell phone and a microwave and left the residence in his vehicle.

On September 23, 2016, a felony complaint was filed charging defendant with robbery (§ 211); infliction of corporal injury on a cohabitant or girlfriend (§ 273.5, subd. (a)); and misdemeanor vandalism (§ 594, subd. (a)).

The preliminary hearing was held on November 14, 2017. Following testimony and argument from counsel, the magistrate dismissed the corporal injury charge due to a lack of evidence and held defendant to answer on the remaining charges.

On November 14, 2017, an information was filed charging defendant with robbery (§ 211); misdemeanor vandalism (§ 594, subd. (a)); residential burglary with person present (§ 459); and assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)). The information further alleged that defendant had suffered a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On January 16, 2018, the People amended the information to add infliction of corporal injury on a cohabitant or girlfriend (§ 273.5, subd. (a)). Defendant thereafter pled no contest to the added count, in exchange for an indicated sentence of four years

and dismissal of the remaining charges and enhancement allegations. Prior to pleading no contest, defendant waived advisal of his constitutional rights, and indicated to the court that he had read, initialed, and signed the plea agreement form. Defendant also stated that he understood everything on the plea form and that before he signed the form he went over everything on it with his counsel. In response to the court's inquiry of whether anyone had made promises to him that were not written down on the form in order to get him to plead, defendant answered in the negative. In response to the court's query of whether he had enough time to speak with his attorney and whether he was satisfied with his counsel's advice, defendant answered "Yes" to both questions. Defendant's counsel indicated to the court that she had enough time to speak with defendant about his case, that she had gone over the declaration and plea form with defendant, and that she was satisfied defendant understood everything on the form.

After directly examining defendant, the court concluded that defendant read and understood his plea form and that defendant understood the nature of the charges, the consequences of the plea, and his constitutional rights. The court further found that defendant had personally and orally entered his plea in open court, that defendant had knowingly, intelligently, and voluntarily entered the plea and waived his constitutional rights, and that there was a factual basis for the plea. The parties stipulated to a factual basis for the plea based upon the reading of the police reports, the preliminary hearing transcript, and the information in the file. The matter was continued for pronouncement of judgment and sentencing.

On February 15, 2018, defendant informed the court that he wished to withdraw his plea.

On February 28, 2018, defendant's appointed counsel, Nichole Mounsey, was relieved and a conflict panel attorney was appointed.

On April 2, 2018, defendant filed a motion to withdraw his guilty plea with supporting exhibits based on ineffective assistance of counsel. Defendant claimed that Attorney Mounsey had advised him and his mother that defendant "could take back the offer if he didn't like it on the day of his sentence."

On April 10, 2018, the People filed an opposition to defendant's motion to withdraw his plea, arguing defendant's request was due to " 'buyer's remorse.' "

On April 19, 2018, the trial court held an evidentiary hearing on defendant's motion to withdraw his plea. Prior to hearing testimony from defendant, defendant's mother, and Attorney Mounsey, the trial court acknowledged that it had failed to orally review defendant's constitutional rights before taking his guilty plea. However, the court noted the written plea agreement referenced those rights and that defendant had orally affirmed he had read and understood the plea form.

Defendant testified that when he signed the guilty plea document he believed that he could later change his mind. He explained that Attorney Mounsey told him that he could plead guilty and later change his mind and withdraw his plea, so long as he did so before the pronouncement of judgment. Defendant also stated that he never discussed the facts of his case with Attorney Mounsey and she never visited him at jail before he signed

the plea agreement. Defendant claimed that he was seeking to withdraw his plea because he did not commit the crime and wanted to “fight [the] case.”

Defendant acknowledged that he had initialed and signed the plea form and that the plea form was accurate, but believed he could change his mind at a later date when he signed the plea form. Defendant also acknowledged that the plea form did not indicate he would be able to change his mind and that he had responded in the negative when the court asked him whether anyone had made any promises to him to get him to plead guilty. Defendant further admitted that he had hired private counsel to represent him on three different occasions and that he had asked private counsel to negotiate a deal with the prosecutor.

Defendant’s mother testified that on the day defendant pled guilty she spoke with Attorney Mounsey who told her that if her son later wanted to withdraw his plea he could change his mind on the 25th of February. Defendant’s mother further stated that the day after the plea, she went to see defendant in jail and he confirmed that he was told by Attorney Mounsey that he could change his mind about the plea. She also asserted that defendant had said he did not understand what he signed, and he did not get to completely read the guilty plea forms. Defendant’s mother noted that defendant had dropped out of high school in the beginning of the 12th grade and that he had not obtained his GED.

Attorney Mounsey testified that she had worked as an attorney for the San Bernardino County Public Defender’s office since 2009, and that during the course of her

employment, she had handled many misdemeanor and felony cases and trials, as well as, numerous plea bargains, change of pleas, and plea forms. Attorney Mounsey explained that she had never informed defendant, or his mother, that he could later change his mind about pleading guilty. She noted that it was her custom and practice to actually read the plea bargain forms to her clients and to make sure they understood everything. Attorney Mounsey further stated that on the day of the plea, defendant wanted to know what his mother thought about the deal. She also stated that she had spoken to defendant's mother outside of the courtroom and defendant's mother was in agreement with the plea deal. Attorney Mounsey clarified that she never stated to defendant or his mother that he could change his mind at a later date and that defendant with his mother's agreement accepted the plea deal because the offer was four years at half time as opposed to four years at 80 percent. Attorney Mounsey also asserted that when she met defendant after the plea, defendant wanted to withdraw his plea because he still appeared indecisive and he was relying on what his mother had advised him.

Following argument, the trial court denied defendant's motion to withdraw his plea. In denying the motion, the court credited Attorney Mounsey's testimony that she never told defendant that he could change his mind and labeled the motion as a case of "buyer's remorse," or "mother's remorse." The court also stated that it did not believe defendant's mother's testimony. The court explained to defendant that even though the corporal injury charge had been dismissed at the preliminary hearing, Attorney Mounsey

had negotiated that dismissed charge, as opposed to the burglary or robbery charge, so that defendant could receive half time and he would not have a second strike.

On April 27, 2018, the trial court sentenced defendant to the upper term of four years in state prison with 561 days of credit for time served, and dismissed the remaining counts and enhancement allegations.

On May 1, 2018, defendant filed a timely notice of appeal and a request for a certificate of probable cause. The trial court denied defendant's request for a certificate of probable cause on May 2, 2018.

### III

#### DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Upon examination of the record, counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-



442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California*, *supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

#### IV

#### DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON

J.

We concur:

MILLER

Acting P. J.

SLOUGH

J.